IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5250 of 2003
Date of Decision. 11.10.2010

United India Insurance Co. Ltd., having its regional office at SCO No.123-124, Sector 17-B, Chandigarh through its duly constituted attorney

.....Appellant

Versus

Harinder Singh son of Sucha Singh and others

....Respondents

2. **FAO No.5251 of 2003**

United India Insurance Co. Ltd., having its regional office at SCO No.123-124, Sector 17-B, Chandigarh through its duly constituted attorney

.....Appellant

Versus

Sukhwinder Singh son of Amar Singh and others

....Respondents

Present: Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for the appellant.

Mr. Sumeet Goel, Advocate
for the claimants-respondents.

3. **FAO No.434 of 2004**

Harinder Singh son of Shri Sucha Singh resident of House No.3465/2, Khattarwala Mohalla, Ambala City, Haryana

.....Appellant

Versus

Rajesh Kumar son of Balak Ram, resident of village Chota Trilokpur, P.O., Raipur Rani, Distt. Panchkula and others

....Respondents

4. **FAO No.435 of 2004**

Sukhwinder Singh son of Amar Singh resident of Geeta Nagri, Ambala City, Haryana

.....Appellant

Versus

Rajesh Kumar son of Balak Ram, resident of village Chota Trilokpur, P.O., Raipur Rani, Distt. Panchkula and others

....Respondents

Present: Mr. Sumeet Goel, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. All the appeals arise out of the same accident. FAO Nos.5250 and 5251 of 2003 are at the instance of the insurance company and FAO Nos.434 and 435 are filed at the instance of the claimants for enhancement of compensation.

2. The ground urged in the appeals filed by the insurance company was that the investigator of the insurance company had collected evidence to the effect that the licence produced was fake. The licence was said to have been issued by the Licensing Authority at Agra and he admitted in the course of examination that he never visited Agra. A report, which the investigator prepared by a written communication and eliciting details cannot be found to be credible for reliance when the investigator himself had not verified with the original records. It can only be taken as a hearsay evidence and the Tribunal was justified in rejecting the report and proceeding to find that the insurance company had not proved that the driver did not have a valid driving licence.

3. The second contention of the insurance company is that the insurance company took steps to summon the records but the Tribunal did not pass the order on the same. The insurer must have seen the application for securing the attendance of witnesses in the

manner possible by procedure prescribed by law and cannot use it as an excuse not to adduce appropriate evidence. The contention is, therefore, rejected that the insurance company was not given adequate opportunity to give appropriate evidence. The appeals filed by the insurance company are, therefore, dismissed.

3. As regards the compensation, which is subject matter of appeal in FAO No.434 of 2004, the claimant had fracture of the upper right humerous with wasting and weakness of the right upper limb with partial stiffness of the right shoulder. The disability assessed was 50% and it was said to be not permanent. The injury was a fracture of the neck humerous with lower plexus. The Tribunal had assessed Rs.75,000/- towards and pain and suffering for 15 days hospitalization and the three months of medical care. The pecuniary damage claims included consultant charges of Rs.5500/-. Against the claim of Rs.12,000/- for medical expenses, the Tribunal found that no medical prescription slips or bill shave been produced and took the expense to be Rs.4,000/- and provided an additional amount of Rs.1500/- for special diet and Rs.1,000/- for private transportation. The total compensation awarded was Rs.87,000/-. I find the assessment of the compensation to be adequate and just and I find no scope for increase in any one of the heads. Even the compensation of Rs.75,000/- for pain and suffering is definitely more than what normally the award could have been. Therefore, I would not differ with the award passed by the Tribunal and I confirm the same. The appeal in FAO No.434 of 2004 is dismissed.

4. As regards the compensation, which is the subject matter of appeal in FAO No.435 of 2004, the claimant was said to be an

agriculturist, who was also owning trucks and earning his income from both the sources. He claimed that he had remained admitted in the hospital for a period of 41 days from 4.5.2001 to 13.6.2001 and he had fracture of the neck humerous with lower plexus, injury of the right upper limb along with supra condylar fracture of the right femur. The fracture of the leg had resulted in a shortening of limb at about 1 ½". The doctor, who had treated him referred to his disability as 30%. The Tribunal awarded Rs.70,000/- towards his disability, Rs.2,000/- for private transportation, Rs.3,000/- for special diet, Rs.18,000/- towards consultation charges against the claim of Rs.26,500/-, the Tribunal had awarded Rs.8,000/-. I see no reason to reduce the claim in any way when bills have been produced. I would, therefore, grant to him the entire amount as covered through the bills. There is no assessment of compensation for any loss of earning capacity. A shortening of the limb cannot be merely a temporary phenomenon. I would, therefore, provide for an additional amount of Rs.20,000/- towards loss of earning capacity. That would mean an additional amount of Rs.38,500/-. The Tribunal has awarded Rs.1,01,000/-. This amount which is in addition to what has been awarded by the Tribunal shall attract interest @6% from the date of the petition till the date of payment. The appeal in FAO No.435 of 2004 is allowed to the above extent.

(K. KANNAN)
JUDGE

October 11, 2010
Pankaj*